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November 12, 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

*Ex Parte*  
CC Docket Nos. 01-338  
WC Docket No. 04-313

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on November 10, 2004, the undersigned and Jere Thompson, President, Spruce Communications, met with Commissioner Kathleen Q. Abernathy and Matthew Brill; Commissioner Kevin J. Martin and Dan Gonzalez; Christopher Libertelli and Aaron Goldberger, Office of the Chairman; and Jessica Rosenworcel, Office of Commissioner Michael J. Copps. We presented the views set forth in the attached document which was provided at the meetings.

Sincerely,



Patrick J. Donovan

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# SBC, *A Monopoly Again?*

November 10, 2004

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Spruce Communications  
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# Spruce Communications

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- Texas residential phone service provider
- Pricing 10% - 15% below SBC
- Enormous back office investment
- Benefit of OSS investment:
  - <1 PUC complaint per 15,000 calls

# Spruce's Customers

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- 70% African American
- 15% Hispanic
- 15% White
- Low and middle income
- Urban and suburban

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# Inter-modal Competition

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- Wireless
- VOIP
- Cable TV providers

# Wireless Customers

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- Tiny percentage have given up wireline phones in Texas
- Young
- Single
- Transient

# VOIP Customers

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- Young
- Single
- More educated
- More affluent
- Technologically savvy

# Cable Telephony Customers

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- Cable telephony phone service not available in Texas major markets



# Intra-modal Competition

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- Residential UNE-P unprofitable at existing rates for major CLECs
- CLECs weakened by SBC entry into long distance and by SBC winback programs
- Niche CLECs are lone residential survivors

# The Dallas Morning News

## SBC's profit soars as rivals weaken

(10/22/04)

### Decline in phone lines held revenue growth in check at firm

By **VIKAS BAJAJ**  
Technology Writer

SBC Communications Inc. is no longer suffering from losses to competitors like AT&T Corp., but that doesn't mean it's entirely on easy street yet.

The San Antonio-based phone company reported a soaring third-quarter profit Thursday that was due at least in part to its competitors' diminished strength. But revenue growth remained tepid as total telephone lines declined by 4.2 percent from a year ago.

SBC's profit climbed 72 percent to \$2.1 billion (63 cents a share), but much of the gain was due to an \$827 million profit

from the sale of a Midwestern directory business. Excluding one-time items, SBC earned 38 cents, up from 36 cents a year ago. Revenue climbed 1.4 percent to \$10.3 billion.

Investors sent the stock down 78 cents, or 3 percent, to \$25.68.

Wall Street appears to be concerned about how quickly SBC is winning back phone lines from rivals, its rising capital spending and the results at the company's Cingular Wireless joint venture, said Will Power, an analyst with Robert W. Baird in Dallas.

"There have been growing expectations that the access line results were going to be vastly [better] than they were," he said. But "it's hard to be disappointed."

SBC said that rival phone companies were leasing 213,000 fewer phone lines from it and that it was winning back 90 percent of those customers.

That is good news, because leasing a line to a rival brings in \$17 in revenue while selling it to a retail customer brings in \$37, said Rick Lindner, SBC's chief financial officer.

AT&T and other companies have been pulling back from the local-phone business after a string of court and regulatory decisions made it more expensive to operate.

On Thursday, AT&T reported a \$7.1 billion loss (\$8.95 a share) on revenue of \$7.6 billion. That compares with a profit of \$418 million (53 cents) on revenue of \$8.6 billion the year before.

A large part of the third-quarter loss came from \$12.5 billion in charges AT&T took to write down the value of its long-distance assets and to cover severance costs.

It doesn't help AT&T that SBC signed up 1.3 million long-distance lines, bringing its total to 19.8 million. The local-phone giant also added 402,000 digital subscriber lines to end with 4.7 million. And it added 105,000 satellite-TV subscribers to its new partnership with Dish Network.

SBC also plans to deliver video services over phone lines by bringing high-speed fiber optics to within 3,000 feet of 18 million homes.

"It's an exciting time for us," said Edward E. Whitacre Jr., SBC chairman and chief executive. "We are moving forward, and I know we are going to do well."

E-mail vbajaj@dallasnews.com

# UNE-P Already in Decline

- New UNE-P lines (in SBC areas) have already fallen rapidly:

1Q03	770,000
1Q04	163,000
- Largest CLECs have already stopped marketing residential service in Texas
  - AT&T
  - MCI
  - TalkAmerica
  - Z-Tel

# Residential Competition

- No true inter-modal competition for low and middle income families
- Surviving intra-modal competition will be eliminated if:
  - UNE-P is unavailable, or
  - replacement is uneconomical

# Impact of UNE-P Increase

	<u>existing</u>	<u>example</u>
total revenue per line	40.00	40.00
less: UNE-P costs	<u>-20.00</u>	<u>-30.00</u>
gross profit per line	20.00	10.00
less: billing, care, bad debt	<u>-8.00</u>	<u>-8.00</u>
operating profit per line	<u>12.00</u>	<u>2.00</u>
lifetime profit / line (11 mos.)	132.00	22.00
less: costs of acquisition	<u>-75.00</u>	<u>-75.00</u>
<b>net lifetime profit per line</b>	<b>57.00</b>	<b>-53.00</b>

# SBC Position of Strength

- SBC holds all of the cards negotiating commercial agreements
- SBC has little incentive and feels little compulsion to negotiate
- Could become “take it or leave it”
  - huge price increases for UNE-P
  - huge price increases for cost of orders

# No Need For Flash Cut

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- Major CLECs have already stopped residential marketing
- SBC already winning back residential lines lost to majors
- SBC already making infrastructure investments

# Residential UNE-P Transition

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- Spruce wants to negotiate a fair commercial agreement with SBC
- Multi-year transition for residential UNE-P puts negotiations on a level field



# Summary

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- Preserve residential competition for low and middle income families
- Extend residential UNE-P for several more years
- Prevent SBC from quickly becoming a residential monopoly again